

HAWAI'I COUNTY PUBLIC ACCESS, OPEN SPACE AND NATURAL RESOURCES
PRESERVATION COMMISSION

MINUTES-REGULAR SESSION

May 12, 2014

Hawai'i County Building
Puna Conference Room
25 Aupuni Street, Suite #1501
Hilo, Hawai'i 96720

Present: Chair Enock Freire
Vice-Chair Gail Byrne Baber
Commissioner Timothy DeLozier
Commissioner Wilma Matsumura
Commissioner William Meyers
Commissioner Marilyn Nicholson

Absent: Commissioner Debbie Hecht

Others Present: Bill Brilhante, Deputy Corporation Counsel
Ken Van Bergen, Property Manager, Finance (*left @ 10:27 a.m.; arrived @
11:39 a.m.*)
Alexandra Kelepolo, Property Management Technician, Finance

CALL TO ORDER

The meeting was called to order by Chair Enock Freire at 10:07 a.m. He welcomed Mr. Willy Meyers to the Commission who will be representing Council District 3. He told all members of the public that testimony will be limited to three minutes.

STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS

GENE TAMASHIRO

Mr. Gene Tamashiro a resident of Kaumana, Hilo spoke of his family living in Hawai'i for over 100 years. He talked about how growing up here in Hawai'i his father fought for truth and freedom under the U.S. Constitution. He talked about how corrupt the government is and that the truth really matters. In regards to the lands in Kāwā, the land was never lawfully transferred from the owners, Republic of Hawai'i to the United States. He feels that due process should be put in to find out the truth of the claim that there are families' alive and well, heirs of King Kamehameha III. He feels that the County and DLNR need to provide evidence that they have lawful title.

BARBARA BELL

Ms. Barbara Bell, a resident of Kapoho, spoke in support of the Hara property in Wai'opae. She is currently working with Oshi and community members regarding management and stated that there is a 501(c)(3) that is currently taking care of the property and will continue to do so if the County acquires.

OSHI SIMSARIAN

Ms. Oshi Simsarian spoke in support of the Wai‘opae property and is talking with the community in regards to management and stewardship. There were a number of people present from Malama O Puna at a recent gathering to discuss the long-term plans. They are very involved with the property regarding removal of invasive species and native planting. She is also in support of the maintenance fund and hopes the County moves forward with the appraisal process.

COMMISSION TO DISCUSS WITH CLAYTON HONMA, DIRECTOR, PARKS & RECREATION, REGARDING THE PUBLIC ACCESS, OPEN SPACE AND NATURAL RESOURCES PRESERVATION MAINTENANCE FUND AND IMPLEMENTATION OF STEWARDSHIP GRANTS TO COMMUNITY GROUPS

Mr. Clayton Honma updated the Commission regarding stewardship grants and informed them that an application has been prepared for 501(c)(3) community groups to apply for monies this year. Currently about 30,000.00 has been spent for Kipapa Park maintenance in addition to archaeological and flora/fauna studies currently in the works for some of the properties costing approximately 221,000.00. P&R will work with the Finance Department to put out the advertisement in July to solicit for stewardship grant applications.

Ms. Nicholson asked if you have to be a 501(c)(3) in order to apply. Mr. Honma replied yes. Ms. Nicholson asked who’s going to review these applications. Mr. Honma replied P&R and Finance. He also clarified that if you are not a 501(c)(3), you can go under the umbrella of a non-profit.

Ms. Nicholson asked if there will be notifications sent out to the community groups that submitted the nominations. Mr. Van Bergen said that if we have a list set-up, we can send it out in addition to the ad being published in the newspapers.

Ms. Byrne Baber thanked Mr. Honma for implementing this and is very happy that community groups will now have the chance to apply for these grants.

Mr. Abel Lui, a member of the public commented that P&R should not be involved in this, it should be the kupuna, the native tenants who maintain the land. The County has neither permission nor authority to do this, the lands are kapu.

Mr. Brillhante stated that there’s specific language in the County Code and specific requirements articulated in this section and that’s what Mr. Honma is following. He noted that this is not the time and place to discuss this.

Mr. Lui noted that this has to do with the funds that P&R is going to be giving out in July and who’s going to get what, this is not fair to the native tenants.

Recess: 10:27 a.m.

Reconvened: 10:32 a.m.

SHELLEY MAHI, NATIVE TENANT PROTECTION COUNCIL, TO DISCUSS WITH PONC ON HOW TO PRESERVE OPEN SPACE AND NATURAL RESOURCES AND ADDRESS NATIVE HAWAIIAN GATHERING RIGHTS ON LANDS OWNED BY THE COUNTY OF HAWAI'I

Mr. Brillhante addressed this agenda item and stated that this Commission can only do what they are specifically tasked to do under authority of the Charter and County Code. The Commission has a very definitive purpose about their duties and responsibilities as noted in Section 2-217 and that's all they can do. Maintenance of these lands is under jurisdiction of another department, not this Commission.

Ms. Shelley Mahi addressed the Charter and noted that it does follow under the venue of this Commission to look at better stewardship and recommend different policies. For land acquisitions, there is the alternative for non-purchase acquisitions under federal undertakings agreement with native tenants.

Ms. Mahi talked about what is listed on the agenda item and that it's actually not only native Hawaiian gathering rights but also native tenants. She noted that there is currently no policy on native tenants and open spaces.

Ms. Mahi read "Ua Koe Ke Kuleana O Na Kanaka", a handout that was provided to Mr. Freire.

"King Kamehameha III reserved the rights of the Native Tenants in statutes of Public Recognition. The Native Tenant Protection Council, with over thirty-two members, with members of the general public and local community seek better conditions and consultation compliance in situations where conflicts have arisen about lawful Customs and Usage for the Kanaka in kuleana. County of Hawai'i is presently in conflict with Native Tenants, incorrectly stating that they "own the land", impossible when the land is held in Allodium under Laws of the Land."

Ms. Mahi wanted to go into different issues of what kind of land might fall inside of a PONC area that has been acquired or is in the process of being acquired:

- a. *Ancestral and Ancient laws*
- b. *Mahele Titles and land held in shared interest of the Allodium*
- c. *Land Commission Awards*
- d. *Kuleana*
- e. *Pa Hale (ouselots)*
- f. *Ahupua'a- LCAw of Ahupua'a to Chiefs with Konohiki or "Government" Ahupua'a*

This brings out the issue of so called ceded land which the County admits that the United States never owned so it's impossible for the County and PONC to acquire these lands in full.

- g. *Royal Patent Grants*
- h. *Cultural Sites*
- i. *Estuaries, fish hatcheries*
- j. *Coastal lands in conservation zones*

Ms. Mahi stated that kanaka in open spaces should have PASH rights that extend beyond when the sun goes down. Presently the Mayor's office is dictating that they can only go on the right side of the pond and they are not allowed there after night. There hasn't been proper due diligence among the heirs of

Kamehameha which do exist. The County, being a municipal corporation of the State is bound to the United States Constitution including the Apology Bill. Hawaiians who are native tenants on these properties cannot be charged with criminal trespassing. Under Hawai'i Revised Laws of 1925, it lists all crown lands and native tenant rights.

Ms. Mahi then read Section 19-89.5 (a), Kuleana land exemptions:

“For the purposes of this section, “kuleana land” means those lands granted to native tenants pursuant to L. 1850, p. 202, entitled “An Act confirming Certain Resolutions of the King and Privy Council, Passed on the 21st Day of December, A.D. 1849, Granting to the Common People Allodial Titles for Their Own Lands and House Lots, and Certain Other Privileges,” as amended by L. 1851, p. 98, entitled “an Act to Amend an Act Granting to the Common People Allodial Titles for Their Own Lands and House Lots, and Certain Other Privileges” and as further amended by subsequent legislation.”

Ms. Mahi stated that even congress is in support of native tenant rights, in 1900 they set up the Organic Act of Prince Kuhio, to rehabilitate Hawaiians through the land. The native tenant has appurtenant water rights and the County cannot surpass the rights of the heirs of King Lunalilo as stated in various ahupua'a in Ka'u.

She showed two different maps, one older and one more recent. The older map showing the kuleana lands and noting that the Timoteo family still has rights to the old fish pond.

She stated that under executive order the Hawaiians have a right to self determination – she is making available a copy of the Territory Laws of 1925 which was passed eight days before the overthrow of the monarchy. It lists all the crown lands that are subject to the rights of the native tenant, ¼ acre for a house, ¼ acre for a taro patch and ¼ acre would remain crown lands so title could never be held for that portion.

Ms. Mahi said that there's also the issue of cease and desist regarding native tenants at Kāwā. She suggests that Corporation Counsel look at the laws and read a portion of the Law Enforcement Code of Ethics which highlights obeying the law of the land. She stated that the U.S. Constitution is the only supreme law of the land.

She wanted to bring up the issue of native tenant rights and when she spoke to DLNR, they don't want to violate any federal laws and treaty violations. Because of actions of the Mayor's office that was not directly approved by PONC, serious offenses occurred. The County came in and houses were bulldozed, people were injured and tenants were removed using tazers. A U.S. Coast Guard incident report was issued and a letter from Department of Justice stated that the native tenants were not to be removed by excessive force. So the issue now is what will be the policy for native tenants.

Ms. Mahi asked that the Native Tenant Protection Council is requesting a callout for papers from cultural practitioners, hale o'io, hale o'iwi, hale o'pahu, canoe hale, kahuna lapa'au, hula practitioners and others who would like to submit their suggestions as only kanaka can define themselves under international law.

She asked that the no spray zone issued by SHPD to protect the springs that the kanaka use remain protected. P&R has been completely non-compliant as well as the State and she would like better cooperation. Also any stewardship grants issued should not allow the spraying of pesticides.

ABEL SIMEONA LUI

Mr. Abel Simeona Lui told the Commission that he is the native tenant. The lands that the County is occupying is owned by the Hawaiian kingdom. He spoke of the County spraying in the no spray zone and seven birds died in one year. He made the 911 call and went to jail for this. He talked how Mayor Kim was opposed to all of this and Mayor Kenoi is buying lands all over the island and making it into parks. The laws that the County has here doesn't include the Konohiki of the lands, the native tenants who grew taro and took care of the aina, the County will never have rights.

MOSES HEANU

Mr. Moses Enoka Heanu, a representative of the Hawaiian government prepared a document with maps to recognize the sovereign kingdom of the Hawaiian people. A copy was also provided to the Governor, Mayor, DLNR and he wants a peaceful transition to keep it civil. 150 years of illegal occupation that deprived the native people, no civilized person shall condone tyranny over a nation.

APPROVAL OF MINUTES

Mr. Freire asked the commissioners to review the minutes.

Motion: Vice-Chair Byrne Baber moved to approve the minutes of March 10, 2014. Seconded by Commissioner Nicholson; all members voted aye, motion carried.

WRITTEN COMMUNICATION

Communication No. 14-004: Suggestion Form received on April 28, 2014 from Carol VanCamp, re: Acreage adjacent to Hilo Municipal Golf Course, Tax Map Key: (3) 2-4-02:73

Mr. Freire asked for a motion to accept communication as is.

Motion: Vice-Chair Byrne Baber moved to accept and file communication as is. Seconded by Commissioner DeLozier; all members voted aye, motion carried.

OFFICE OF CORPORATION COUNSEL'S REPORT

Mr. Brillhante had nothing to report.

CHAIRPERSON'S REPORT

Mr. Freire had nothing to report.

Ms. Matsumura asked if anyone attended the public informational meetings. Ms. Byrne Baber reported that she attended the North and South Kohala CDP meetings and it went really well. Ms. Nicholson passed out information at a meeting that Brenda Ford had in her district. Mr. Freire was able to do a presentation at a couple meetings in Kona but have yet to do one in Hilo.

NEW BUSINESS

- **Commission to discuss and consider the establishment of an ad hoc investigative committee to conduct potential site visits on properties submitted by the public**

Recess: 11:10 a.m.

Reconvened: 11:24 a.m.

Mr. Brillhante stated that pursuant to sunshine law they will have to name two members but no more than four if they decide to create an ad hoc committee. There's a lot of flexibility with the process, the only requirement is that before any Commission action is taken the recommendation is put forth at the next meeting so that the public have the opportunity to comment.

Ms. Nicholson noted that the submissions are due by the end of June so they wouldn't know what properties they want to visit. Mr. Brillhante said that if you create the committee now, as the applications come in, the ad hoc committee can meet at any time and discuss whether a site visit would be necessary. Committee members can communicate by e-mail and talk to each other; it doesn't have to be agendaized.

Ms. Nicholson clarified that they don't discuss the suggestion forms until August. Mr. Brillhante replied that the only thing the committee would be tasked with is articulating what they saw, they don't make any decisions.

Ms. Nicholson asked if the committee would need a chair. Mr. Brillhante replied that it's very informal, however they decide. Ms. Byrne Baber commented that individuals and groups that nominated the property should also be contacted. Ms. Nicholson asked if other people can also come on the site visit. Mr. Brillhante noted that's not a good idea, the only person that has the authority is the landowner. It would be good to see documentation that shows the person nominating the property also has the authority to enter onto the property as well.

Mr. Freire asked how many people are willing to participate in an ad hoc committee. Mr. DeLozier and Mr. Meyers are interested. Ms. Matsumura said she could also help if she's available.

Ms. Matsumura think's it's a good idea to appoint one whether they use it or not, that way it would be there if they need to use it.

Motion: Commissioner Matsumura moved to establish an ad hoc investigative committee for potential site visits of properties submitted by the public. Seconded by Commissioner DeLozier; all members voted aye, motion carried.

Mr. Freire asked if there are any volunteers willing to serve on the ad hoc committee. Ms. Matsumura, Mr. DeLozier and Mr. Meyers will serve on the committee and Mr. DeLozier will be the chair.

Mr. Freire asked Ms. Kelepolo if the press release for solicitation of suggestion forms went out. Ms. Kelepolo replied that yes, the Mayor's office sent it out to the various newspapers and radio stations.

Mr. Brillhante told the commissioners in regards to Ms. Mahis' presentation today, when you look at the assessment criteria form, there are five criterias to follow, part of the assessment process involves a lot of the type of information that she presented today.

DEPARTMENT OF FINANCE REPORT

Mr. Van Bergen reported that Pohoiki is progressing, we are in the middle of the AIS that were requested by SHPD and we should have it done by May 23rd. The CDUA was submitted to DLNR and they have 180 days to approve it, once it's subdivided we can move forward with the purchase.

Recently, there were two more resolutions that were passed by Council, the white sands mauka property and the parcel next to the hot springs in Puna.

The yellow book appraisal for Kahuku should be completed this month which was a requirement of the federal grant.

We are also in communication with the residents of Hāwī for the banyan tree park property and hopefully we can move forward and order an appraisal for acquisition.

Ms. Nicholson noted that in the paper, the Kauai Open Space program is looking at reducing the percentage that gets deposited into the fund.

ANNOUNCEMENTS

The next meeting is scheduled for Monday, July 14, 2014, 10:00 a.m. in the West Hawai'i Civic Center, Building G Conference Room, 74-5044 Ane Keohokalole Highway, Kailua-Kona, Hawai'i 96740.

ADJOURNMENT

Meeting adjourned at 11:51 a.m.

Respectfully submitted,

Alexandra Kelepolo
Property Management Technician